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DIGEST OF WATER POLLUTION CONTROL LEGISLATION: NEBRASKA

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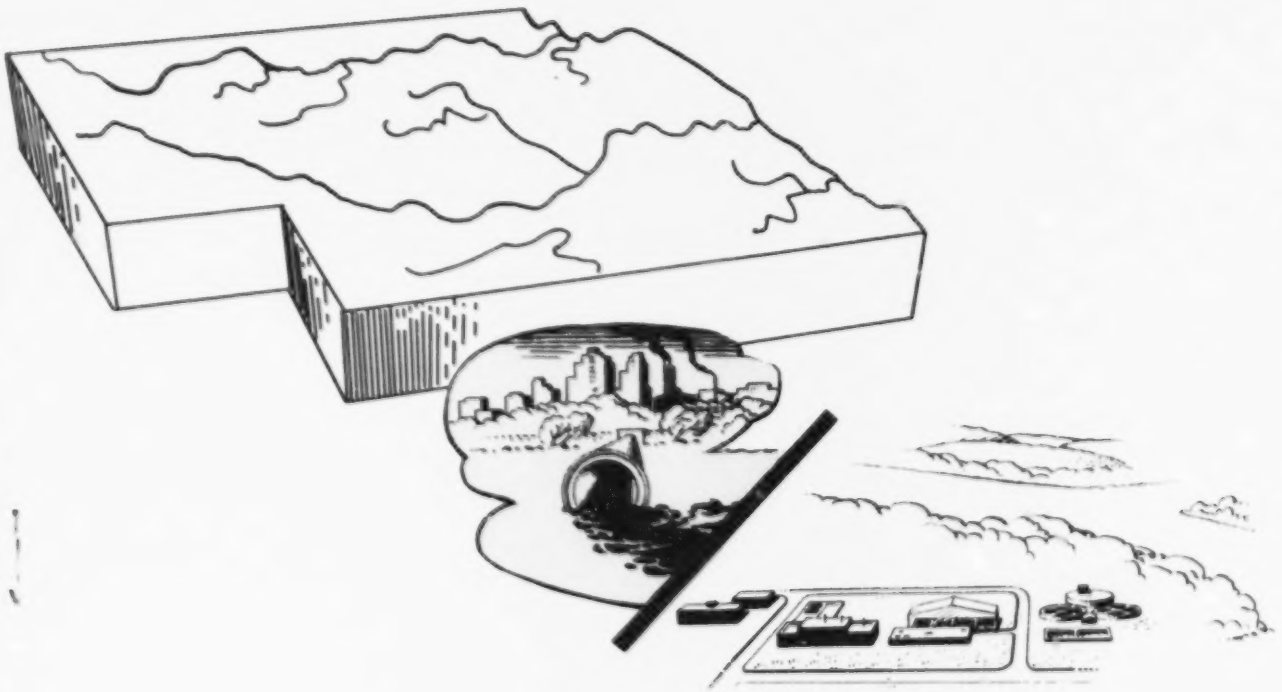

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U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF NEBRASKA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The 1957 Legislature enacted a Water Pollution Control law for the State, and created within the Department of Health a Water Pollution Control Council with the power to formulate and adopt comprehensive programs for the prevention, control and abatement of pollution of the waters of the State (Laws of Nebraska, 1957, Ch. 300, secs. 1-18).[1/]

The Department of Health administers the water pollution control program under the policies, rules and regulations adopted by the Council. It consults and cooperates with other agencies of the State, the Federal Government, other States and interstate agencies, and with affected persons, industries and political subdivisions.

The Department conducts studies, investigations and research relating to water pollution and causes, prevention, control and abatement thereof; reviews and makes recommendations with respect to plans and specifications for disposal systems or parts thereof. It is authorized to apply for, match, and administer such Federal funds as may be available (Laws of Nebraska, 1957, Ch. 300, sec. 7).

The State Geologist is authorized to adopt reasonable rules and regulations for, among other things, the prevention of the pollution of fresh water supplies by oil, gas, salt or brackish water (Sec. 57-215(3)(c)).

II. ADMINISTRATIVE ORGANIZATION

A. State Water Pollution Control Council

1. Composition and organization

The Council consists of the Director of Health, the Secretary of the Game, Forestation and Parks Commission, the Director of the Depart-

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1/ Citations in this digest refer to the Revised Statutes of Nebraska, (1943) and the 1955 Cumulative Supplement thereto, unless otherwise indicated.

ment of Water Resources and six other members appointed by the Governor. Of the appointive members, two represent food products manufacturing industries within the State, one represents other industry within the State, one represents agriculture within the State, and two represent municipal government within the State. Appointive members' terms are for three years, except as to those first appointed, whose terms of office expire as follows: Two on March 1, 1958, two on March 1, 1959, and two on March 1, 1960. The Council elects a Chairman and a Vice Chairman from the appointed members; it also selects a Secretary. The Council must hold at least two regular meetings each calendar year. Special meetings may be called by the Chairman, and must be called by him upon written request of two or more members. A majority of the members constitute a quorum (Laws of Nebraska, 1957, Ch. 300, sec. 3).

2. Powers and duties

a) Development of comprehensive program

The Council is authorized to formulate comprehensive programs for the prevention, control and abatement of pollution of the waters of the State. In this connection, it may develop standards of disposal system effluent quality and water quality as well as classify the waters of the State (Laws of Nebraska, 1957, Ch. 300, sec. 4).

Prior public notice must be given of hearings to be held for water classification and the setting of water quality standards (Laws of Nebraska, 1957, Ch. 300, sec. 5).

b) Review of plans and specifications

Before the construction of any disposal system is begun, the plans and specifications thereof must be submitted to the Secretary of the Council for his review and recommendations (Laws of Nebraska, 1957, Ch. 300, sec. 12).

c) Enforcement

The Council is authorized to issue, modify or revoke orders, after hearing, regulating the discharge of waste in violation of its effluent quality standards (Laws of Nebraska, 1957, Ch. 300, sec. 4 (5)).

When the Department of Health determines that there has been a violation of an order of the Council, it serves notice on the alleged violator specifying the cause of the complaint and requiring the alleged violator to appear before the Council to answer such charges. The Council must afford the alleged violator a fair hearing. On the basis of the evidence adduced at the hearing, the Council makes its findings. It may continue its previous order, revoke or modify it. Its decision becomes final and binding on all parties, unless appealed to the district court, within thirty days after service. An appeal may be taken to the district court by anyone dissatisfied with the classification or quality standards set. The Attorney General may represent the Council upon all such appeals unless he appeals or intervenes in behalf of the State. The Council may employ special counsel including county attorneys for such proceedings. The trial on the appeal is heard by the court de novo without a jury. The court determines whether the orders and decision of the Council are reasonable. The court may continue in effect revoke or modify the decision of the Council. Either party to the appeal may further appeal the case to the Supreme Court of the State in the same manner as appeals in civil cases. Upon the final determination of such judicial proceedings, the Council enters an order in accordance with such determination (Laws of Nebraska, 1957, Ch. 300, secs. 8, 10).

d) Administrative powers

The Council is authorized to hold hearings, issue orders and subpoenas and examine witnesses. The Council or its duly authorized agents may enter at all reasonable times upon any property for the purpose of inspecting and investigating conditions relating to pollution, which inspection or examination does not involve confidential information relating to secret processes or economics of operation. The Council may require the assistance and use of the records of all departments and institutions of the State, and all state officers and state institutions are directed to cooperate with the Council in furtherance of the purposes of the Act (Laws of Nebraska, 1957, Ch. 300, secs. 8, 9, 12, 13).

3. Exemption from operation of Act

Any city or village of the State which is discharging effluent in excess of the classification or standard is not deemed to be in violation of the Act if it is engaging or does then engage in the process of collecting a sinking fund by means of a special two mill levy or is raising a similar amount annually by other means for the purpose of providing the funds necessary for a sewage treatment or disposal plant. Whenever any such community has accumulated such sinking fund for a period of 25 years or longer and such fund is insufficient to provide a sewage treatment or disposal plant, it may terminate such fund and transfer the money to its general fund, and in which event such community is not thereafter deemed to be in violation of the Act (Laws of Nebraska, 1957, Ch. 300, secs. 5(6), 6).

4. Preservation of existing rights

The Act is not to be construed so as to interfere with the appropriate and right to use water as otherwise provided by law (Laws of Nebraska, 1957, Ch. 300, sec. 15).

5. Statement of policy; severability clause

It is the public policy of the State to maintain reasonable standards of water quality consistent with the right of appropriation and use of water thereunder, with the laws of the State, with public health, the propagation and protection of fish, wildlife, and aquatic life, and the agricultural and industrial development of the State (Laws of Nebraska, 1957, Ch. 300, sec. 1).

The Act contains a severability clause (Laws of Nebraska, 1957, Ch. 300, sec. 16).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful:

For anyone to place in any waters of the State any dynamite or other explosives for the purpose of killing or taking fish (1955 Cum. Supp., sec. 37-515).

For anyone to discharge any refuse into or near any of the waters of the State or into any ditch or sewer which discharges such refuse into any such waters, or to leave or place such refuse so that the elements carry it into such waters (Sec. 37-516). 2/

2/ Under section 37-516 of the Revised Statutes of Nebraska, this prohibition does not apply to any corporation, city of the second class or village that has been using any such waters or that has been using any ditch or sewer discharging into such waters for waste removal prior to August 2, 1931.

However, the Attorney General of Nebraska, in an opinion dated July 28, 1958 to the Water Pollution Control Council, has advised that the exception to the prohibition contained in section 37-516 is unconstitutional and that it may be ignored until a Court of competent jurisdiction holds otherwise.

For anyone to place the carcass of any dead animal, fish or fowl in or near any of the waters of the State, or leave it in such a place where it may be washed into such waters (Secs. 37-517, 28-1013).

For anyone to place any matter harmful to fish into any of the waters of the State where the same has been stocked by the Game, Forestation and Parks Commission (Sec. 37-520).

For anyone to maintain a stagnant pond (Sec. 28-1012).

For anyone to put the carcass of any dead animal or any offal, other putrid substance or the contents of a privy vault into any waters of the State (Sec. 28-1014).

For anyone to throw away or abandon any dead human body, in any river, stream, pond, waterway or reservoir (Sec. 28-1033).

To put the carcass or offal of any animal from a slaughterhouse into a watercourse or upon the banks of a watercourse flowing through any city or village (Sec. 54-769).

It is a nuisance for anyone to corrupt or render unwholesome or impure any watercourse or stream (Sec. 28-1016).